

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 746/Mum/2024  
(Assessment year: 2013-14)

<b>Mangesh Vasant Joshi</b> 1902, Greesha Residency 1, Mental Hospital Road, Thane (West), Thane-400 602 <b>PAN : ABJPJ4122E</b>	<b>vs</b>	<b>DCIT, Circle-3, Thane</b> Qureshi Mansion, Gokhale Road Thane 400 602
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Aditya Ramchandran

Respondent by : Shri H.M. Bhatt, (SR.DR)

Date of hearing : 11/06/2024

Date of pronouncement : 14/ 06/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee is preferred against the order of the Ld. National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2013-14, date of order 26.12.2023. The impugned order was emanated from the order of the Ld. Deputy Commissioner of Income-tax, Circle-1, Jalgaon (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 23/03/2016.

2. The assessee has taken the following grounds of appeal:-

*“The appellant submits the following grounds:*

1. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the disallowance of interest on TDS amounting to Rs. 30,002 under Section 37(1).*
2. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the disallowance of prior period expenses amounting to Rs. 24,12,000/-.*
3. *On the facts and circumstances of the case and in law, Ld. CIT (A) has erred in confirming the disallowance of interest expenditure of Rs. 3,40,800 under Section 36(1)(iii).*

*The Appellant craves leave to add, alter, amend, vary and / or withdraw any or all the above grounds of appeal.”*

2. Brief facts of the case are that the assessee has challenged only two issues related to addition of prior period expenses amount of Rs.24,12,000/- and the addition was made related to notional interest charged on unsecured loan amount of Rs.28,40,000/-, interest @ 12% which works out to Rs.3,40,800/-. Aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

3. The Ld.AR filed a written submission which is kept in record (in short, APB). The Ld.AR first mentioned that ground No.1 is not pressed. The Ld.AR proceeded to argue only ground nos 2 & 3.

4. **Ground No.2&3:**

The Ld.AR argued and mentioned that the assessee had purchased from BASF Constructions & Chemicals (I) Pvt Ltd (in short 'BASF') during the financial year 2010-11 relevant to A.Y. 2011-12. Out of that purchase, Rs.24,12,000/- was not taken during FY 2010-11. The same amount is debited in impugned assessment

year as adjustment of prior period expenses. During the assessment proceedings, the Ld.AO rejected the same and added back with the total income. The observation of the Ld.CIT(A) related to both the additions is reproduced as below:

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*“8.4 Additional Ground No. 2 pertains to addition of Rs. 24,12,000/- made by the AO by disallowing certain expenses under the head 'prior period expenses'. The appellant did not challenge the facts of this issue and stated that these expenses could not be claimed earlier as the bill of the said party was misplaced. According to the AO as the appellant is maintaining books of account mercantile basis. So expenses incurred in the previous year cannot be allowed this year. I agree with the view of AO that the liability was arisen in the previous year, the treatment of such expenses should have been given in the same year keeping in view of those accounting system of the appellant. Even if, the bill was misplaced the appellant should have claimed such expenses on the basis of provision or otherwise could have obtained the copy of the bill from the supplier. Though this issue is revenue neutral but not as per the accounting principles. The addition made by the AO is confirmed and the ground of the appellant is dismissed.*

**8.5** *Ground of Appeal No. 4 and Additional Ground No. 3 of the appellant pertains to addition of Rs. 3,40,8007- being notional interest charged on the interest free loan of Rs. 28,40,0007- given by the appellant to his father. The Ld. AO have noticed that appellant has paid interest of Rs. 6,75,510/- on unsecured loans, however, did not collect any interest on the non-business loan given to his father. The contention of the AO is correct. The appellant also did not make any details submission on this issue. The ground is dismissed.”*

5. The Ld.AR respectfully relied on the order of Hon'ble Gujarat High Court at Ahmedabad bearing T.A. No. **566 of 2016 PCIT 1 vs Adani Enterprises Ltd**, date of order **20/07/2016**. The relevant part of the order is extracted as below:-

*"1. The Revenue is in appeal against the judgement of the Income Tax Appellate Tribunal dated 1.1.2016 raising following questions of law for our consideration:*

*"(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the disallowance of Prior Period expenditure of Rs.67,88,591/-*

*(B) Whether on the facts and in the circumstances of the case and in law the Tribunal was right in deleting the interest charged under section 234B, 234C and 234D of the Act?"*

*2. Main question is sum of Rs.67.88 lacs(rounded off) which the Assessing Officer and CIT(Appeals) disallowed treating the expenditure as a prior period expenditure. The Tribunal reversed the findings of the Revenue authorities primarily on two grounds. Firstly, that the assessee being a company was charged uniformly for all years and would therefore, have no revenue implication of whether the expenditure was recognized in this assessment year or earlier year. The second ground was that in any case, the Revenue had recognised the prior period income. If that be so, according to the Tribunal, it would be unfair not to recognise the expenditure also of the prior period.*

*3. Having heard learned counsel for the parties and having perused the documents on record, we see no reason to interfere. Firstly, the expenditure of Rs.67.881acs is a fraction of the total income of the assessee company declared at Rs.105.88 crores. Further, even the Revenue does not dispute that the company would be taxed at the same rate in the present assessment year or during earlier year. It is also not disputed that prior period income was declared*

*by the assessee during the current year which is also accepted by the Revenue.*

*No question of law therefore, arises.*

4. *Question B pertains to interest which would apply once the assessee's tax liability is ascertained. The Tribunal has merely made such interest consequential. No question of law arises.*
5. *Tax appeal is dismissed.*

*(AKIL KURESHI, J.)"*

6. The Ld.AR argued that the Ld.AO made an addition under section 36(1)(iii) related to notional interest on balance amount of the loan Rs.28,40,000/- @12% which works out to Rs.3,40,800/-. The Ld.AR prayed that both the additions are subject to deletion.

7. The Ld.DR argued vehemently and invited our attention in assessment order page 5 para 7 which is reproduced as below: -

**"7. DISALLOWANCE U/s 36(IUii) OF THE INCOME TAX ACT. 1961:**

*On perusal of the details and documents, it is noticed that the assessee has given loans and advances to Shri Vasantrao R Joshi. The closing balance as on 31.3.2013 is Rs. 32,50,000/-. The closing balance as on 31.3.2012 is Rs. 80,00,000/-. Against this loan, the assessee has received unsecured loan from the abovementioned person. The closing balance as on 31.3.2013 is Rs. 4,10,000/-. In this regard, the AR made a written submission dated 7.3.2016 which is reproduced herewith-*

*"There are two accounts in my books of account, viz, loan from Vasant Joshi and Loan to Vasant Joshi, Both the above said accounts are of same party and are interest free, I am also attaching herewith copy of ledger extracts of both the above-mentioned loan accounts for your reference and records."*

*The submission of the assessee was considered very carefully. The assessee has paid interest of Rs. 6,75,5107- on the unsecured loan taken. Therefore, considering this fact, interest at 12% is worked out on this net amount of Rs. 28,40,000/-. The interest works out to be Rs. 3,40,800/-. This amount of Rs. 3,40,8007- is disallowed u/s 36(l)(iii) of the Income Tax Act, 1961 and added to the total income of the assessee,”*

The Ld.DR fully relied on the order of the revenue authorities.

8. We heard the rival submission considered the documents available in the record. The assessee claimed the prior period purchase during the impugned assessment year amount of Rs.24,12,000/-. Considering the ledger copy of the party from whom the assessee purchased the goods is a continuous process of transaction and copy of the ledger if annexed in **APB pages 1 to 3**. On perusal of the ledger, we find that the assessee paid to the party, BASF in FY 2010-11 amount to Rs. 2,16,00,774/-. The total purchase credited in FY 2010-11 amount to Rs. 1,91,88,774/-. So, the difference amount to Rs. 24,12,000/- was excess payment during FY 2010-11. The assessee claimed that the purchase amount to Rs. 24,12,000/- was not claimed in the FY 2010-11 related AY 2011-12. We respectfully considered the order of **Adani Enterprises Ltd**(supra). The prior period adjustment can be allowed after verification of following conditions. So, the matter is remitted back to the file of the Id. AO for adjudication denovo after verification of this issues as stated below:-

- Movement of stock of goods in AY 2011-12 & AY 2013-14 related adjustment of prior period purchase amount to Rs. 24,12,000/-

- Verification of sales proceeds in both assessment year related to this purchase.
- Verify the delivery of purchase i.e. road challan or any other.
- Taxing effect in both the years accordingly the revenue loss should be plugged off.

When the assessee purchased goods, the stock is entered in the books and the related sale should be booked in relation to that purchase or the purchase will be booked on the stock in trade. In both the cases, the effect will come in GP. From the point of revenue, the shifting of prior period purchase is in the effect in tax which must be taken care of. The Id. DR was not able to file any contrary judgment against the submission of the Id. AR.

Accordingly, **ground No.2** of the assessee is allowed for statistical purpose with a specific direction indicated above.

9. In question of ground No.3, the issue is clearly depicted by the Ld.AO and by the Ld.CIT(A). The assessee is paying interest for the loan taken, but assessee is not charging the interest on the loan given to the party. The Id. AR relied on the number of judgments which are factually distinguished. We find that there is no merit in the ground of the assessee. We are not interfering in the order of the revenue authorities. The addition amount to Rs. 3,40,800/- is upheld.

Accordingly, **ground No.3** of the assessee is dismissed.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> day of June 2024.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 14/06/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai